American Gem Sprinkler Co., Inc. ***and*** **Road Sprinkler Fitters Local Union No. 669, United Association of Journeymen & Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL–CIO** ***and*** **United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 536.** Cases 5–CA–24278 and 5–CA–24386

January 24, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS AND TRUESDALE

On June 9 and 10, 1994, the General Counsel of the National Labor Relations Board issued complaints alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charges and complaints,[1] the Respondent has failed to file an answer to either complaint.

On November 21, 1994, the General Counsel filed a Motion for Summary Judgment. On November 25, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaints in each case state that unless an answer is filed within 14 days of service, ''all the allegations in the complaint shall be considered to be admitted to be true and shall be so found by the Board.'' Further, the undisputed allegations in the Motion for Summary Judgment disclose that counsel for the General Counsel, by letter dated November 10, 1994, notified the Respondent that unless it filed answers to the complaints, or requested an extension of time for filing, by November 17, 1994, a Motion for Summary Judgment would be filed. The Respondent did not reply to that letter, and neither filed answers to the complaints nor requested an extension of time for doing so.

In its response to the Notice to Show Cause, the Respondent asserts that it is prevented by a court order from visiting its office in Woodbine, Maryland, and thus is ''unable to supply your office with our records.''[2] The Respondent avers that ''at this time'' it is in a serious financial position. It also alleges that it is in the midst of court proceedings, and therefore that its attorney ''is also very involved at this time.'' The Respondent states that it does not agree with ''the Unions position'' and would appreciate another chance to present its information to the Board.

We find that the Respondent has not shown good cause for its failure to file timely answers to the complaints or, prior to the issuance of the Notice to Show Cause, for its failure to request a further extension of time to do so. First, the Respondent's claim that it is now prevented by court order from entering one of its facilities is irrelevant. The complaints were issued in early June 1994. Under the Board's Rules and Regulations, the Respondent was required to answer them by late June. The Respondent does not contend that it was prevented from entering its office to obtain relevant records at that time, or even as late as November 1994, when counsel for the General Counsel advised the Respondent that the time for filing answers had been extended. Thus, that the Respondent may *now* be precluded from entering its office does not explain why it failed to answer the complaints in a timely fashion. We note, in addition, that the Respondent does not represent that it has attempted to persuade the court to allow it to retrieve relevant records from the office in question.[3] Moreover, the complaint in Case 5–CA–24386 alleges that the Respondent unlawfully withdrew recognition from Local 536. It is difficult to understand why the Respondent should require the assistance of any records in answering that allegation. Finally, Section 102.20 of the Board's Rules and Regulations provides that if a respondent is without knowledge concerning a complaint allegation, it may so state, and such a statement will operate as a denial. Thus, even if the Respondent had been denied access to records that were necessary to answer either com-

[1] Both charges and both complaints were served by certified mail. Both complaints and the charge in Case 5–CA–24278 were returned unclaimed. Although the Respondent now contends that it does not have access to its office at the address to which the charges and complaints were mailed, the Regional Director's order consolidating cases and setting the date for hearing was mailed to the same address as the other documents, and delivery was accepted. The Respondent, in any event, does not assert that it did not receive copies of the charges and complaints. Failure or refusal to accept delivery of certified mail will not be allowed to defeat the purposes of the Act. *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986).

[2] The letterhead on which the Respondent's response is written shows a different address, in Annapolis Junction, Maryland. The Respondent does not state whether it has access to records in that office.

[3] See *Hahn Motors*, 314 NLRB 511 (1994) (where the Board's Regional Office apparently possessed copies of the respondent's payroll records and other documents but the respondent made no request for access to those documents, the Board rejected the respondent's allegation that it lacked access to the documents and therefore had no way of knowing whether the allegations of the backpay specification were accurate).

plaint, it could have effectively denied the pertinent allegations by stating that it was without knowledge.

Similarly, the Respondent's contention that it is now suffering financial reverses does not explain why it failed to file timely answers months ago. Nor, for the same reason, does the Respondent's representation that its attorney is ''very involved *at this time* [emphasis added]'' shed any light on its failure to answer the complaints months ago, in a timely fashion, or to request an extension of time for filing. That the Respondent's attorney may be busy does not, in any event, constitute good cause for failing to file a timely answer.[4]

Finally, the Respondent's statement that it does not agree with ''the Unions position'' is too vague to constitute an acceptable answer to the complaints, even if good cause had been shown for the Respondent's failure to file answers in a timely fashion. Section 102.20 of the Board's Rules and Regulations requires that

> The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The Respondent's statement does not specifically deny any of the allegations of either complaint, let alone indicate the basis for the denial. Such a statement does not constitute a proper answer.[5] Even assuming that the Respondent meant to raise the predicaments mentioned in its response to the Notice to Show Cause as defenses to the complaint allegations, the attempt would be unavailing. Those current problems would not excuse the allegedly unlawful acts committed months ago.[6]

For all the foregoing reasons, we find that the Respondent has not shown good cause for its failure to answer the complaints in a timely fashion. We therefore grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Maryland corporation with an office and place of business at Woodbine, Maryland, is engaged in the installation, alteration, maintenance, repair, and service of fire sprinkler systems. During the 12 months preceding the issuance of the complaints, the Respondent, in the course of its business operations, provided services valued in excess of $50,000 for other enterprises within the State of Maryland, including D & M General Contractors Co., Inc. (D & M). D & M, a Maryland corporation, is engaged in general contracting at its Rockville, Maryland location and received gross revenues in excess of $1 million during the preceding 12-month period. During the same period, D & M purchased and received goods and materials valued in excess of $50,000 directly from points located outside the State of Maryland. At all material times, D & M has been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Unions, Local 669 and Local 536, are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *Case 5–CA–24278*

The following employees (unit 1) constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time journeymen and apprentice sprinkler fitters engaged in the installation, alteration, maintenance, repair, and service of automatic sprinkler and fire control systems; excluding all other employees, guards, and supervisors as defined in the Act.

Since about 1988, Local 669 has been the designated exclusive collective-bargaining representative of unit 1

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[4] *U.S. Telefactors Corp.*, 293 NLRB 567 (1989).

[5] See *Superior Home & Health Care*, 287 NLRB 45, 46 (1987). When a pro se respondent's answer clearly denies the unfair labor practice allegations of the complaint, the Board will not grant summary judgment for the General Counsel even if the answer does not address all the factual allegations of the complaint and is not in a form that comports with the Board's Rules and Regulations. *Tri-Way Security*, 310 NLRB 1222, 1223 (1993). Here, it is questionable whether the leniency shown to pro se respondents should apply to the Respondent, which is represented by counsel in other matters. We need not address that issue, however, because the Respondent's statement does not specifically deny any of the complaint allegations.

[6] Indeed, the Respondent's financial and legal problems and the busy schedule of its counsel would not be cognizable defenses to the allegations that it withdrew recognition from one union and failed utterly and without explanation to provide information to the other, even if those conditions had existed contemporaneously with the allegedly unlawful conduct. See *FMC Corp.*, 290 NLRB 483, 489 (1988) (fact that employer was involved with other matters, including litigation, no explanation for complete failure to respond to union's information request). Lack of access to its facility might have excused a concurrent failure to provide information (but certainly not the withdrawal of recognition); however, the Respondent does not make this argument.

and has been recognized as such by the Respondent. Recognition has been embodied in a contract between Local 669 and the National Fire Sprinkler Association, Inc., which is composed of various employers engaged in the installation, maintenance, and repair of sprinkler systems, one purpose of which is to represent its employer-members in negotiating and administering collective-bargaining agreements. Since March 29, 1991, the Respondent has been signatory to the contract described above pursuant to its assent and interim agreement as an independent contractor. At all times since March 29, 1991, Local 669 has been the exclusive Section 9(a) collective-bargaining representative of unit 1.

Since about February 7, 1994, Local 669 has requested the Respondent to furnish the following information:

> (1) Are you and/or American Gem Sprinkler Co., Inc. (''American Gem'') a party to any agreement(s), contract(s) and/or subcontract(s), whether oral or written, with Figgie International, Inc. (''Figgie'') and/or any of Figgie's subsidiaries or other related entities, including, but not limited to ''Automatic'' Sprinkler Corporation of America (''Automatic'') or American LaFrance? If so, please provide Local 669 with a copy of each such agreement. If the agreement is oral, provide the date(s), parties, and the term(s) of each such agreement.
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> (2) Do you and/or American Gem and/or any of its officers or employees have any business relationship with Figgie and/or any of its subsidiaries or other related entities, including but not limited to, Automatic or American La France? If so, please describe each such relationship in detail, including when the relationship began.
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> (3) Please provide the names, addresses, telephone numbers and social security numbers of each and every employee of America Gem that is performing or that has performed bargaining unit work within the jurisdiction of Local 669 during the period January 1, 1993 to the present.
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> (4) For each employee named above, please list the date of hire, the dates and hours worked and the wages and fringe benefits paid to such employee for each hour of bargaining unit work performed. Additionally, list all travel expenses paid (including travel time, mileage and subsistence) to each of the above named employees.
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> (5) Please provide the names and locations of those jobs on which sprinkler and/or fire protection work is being and has been subcontracted to or from any other entity, or which has been or is being performed by the employees of American Gem during the period January 1, 1993 to the present.
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> Please note that the nature of this request is continuing. That is, the information requested as described above should be provided from the date specified above to the week-ending date immediately preceding your response. We do not require this information to be supplied in a particular form and will reimburse you for the reasonable costs of photocopying.

With the exception of employee social security numbers, the information requested is necessary for, and relevant to, Local 669's performance of its duties as the exclusive collective-bargaining representative of unit 1.[7]

Since about February 24, 1994, the Respondent has failed and refused to furnish the requested information to Local 669. By that conduct, the Respondent has failed and refused to bargain collectively in good faith with the exclusive representative of its employees within the meaning of Section 8(d) of the Act, in violation of Section 8(a)(5) and (1) of the Act.

B. *Case 5–CA–24386*

The following employees of the Respondent (unit 2) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b):

> All journeymen sprinkler fitters and apprentices engaged in the installation, dismantling, maintenance, repairs, adjustments and corrections of all fire protection and fire control systems, excluding all other employees, guards, and supervisors as defined in the Act.

Since about 1988, Local 536 has been the designated exclusive collective-bargaining representative of unit 2 and has been recognized as such by the Respondent. Recognition has been embodied in a contract between Local 536 and the National Fire Sprinkler Association, Inc. The most recent contract was effective from June 1, 1991, through May 31, 1994. Since July 11, 1991, the Respondent has been a nonmember signatory to the contract. At all times since July 11, 1991, Local 536 has been the exclusive Section 9(a) representative of unit 2.

On about January 29, 1994, the Respondent withdrew recognition from Local 536. By that conduct, the Respondent has failed and refused to bargain collectively in good faith with the exclusive representative of its employees within the meaning of Section 8(d), in violation of Section 8(a)(5) and (1).

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[7] The Board has held that social security numbers are not presumptively relevant. Accordingly, in the absence of a showing here of their potential or probable relevance, we dismiss the allegation concerning the failure to produce social security numbers. *Turner-Brooks of Ohio*, 310 NLRB 856, 857 fn. 1 (1993).

CONCLUSION OF LAW

By failing and refusing to bargain with the Unions in the manner set forth above, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, we shall order the Respondent to provide Local 669 with the information it requested about February 7, 1994, except for employee social security numbers. We shall order the Respondent, on request, to recognize and bargain with Local 536 as the exclusive representative of employees in unit 2 and, if an understanding is reached, to embody it in a signed agreement.[8]

ORDER

The National Labor Relations Board orders that the Respondent, American Gem Sprinkler Co., Inc., Woodbine, Maryland, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to provide information requested by Road Sprinkler Fitters Local Union No. 669, United Association of Journeymen & Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL–CIO, that is relevant and necessary to the performance of its responsibilities as the exclusive collective-bargaining representative of the Respondent's employees in the following appropriate unit (unit 1):

> All full-time and regular part-time journeymen and apprentice sprinkler fitters engaged in the installation, alteration, maintenance, repair, and service of automatic sprinkler and fire control systems; excluding all other employees, guards, and supervisors as defined in the Act.

(b) Withdrawing recognition from United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 536, as the exclusive collective-bargaining representative of the Respondent's employees in the following appropriate unit (unit 2):

> All journeymen sprinkler fitters and apprentices engaged in the installation, dismantling, maintenance, repairs, adjustments and corrections of all fire protection and fire control systems, excluding all other employees, guards, and supervisors as defined in the Act.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish the information requested by Local 669 about February 7, 1994, except for employee social security numbers.

(b) On request, recognize and bargain with Local 536 as the exclusive collective-bargaining representative of employees in unit 2 with respect to wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody it in a signed agreement.

(c) Post at its facility at Woodbine, Maryland, or, if the Respondent does not have access to that facility, at any other facility at which it employs employees represented by either Local 669 or Local 536, copies of the attached notice marked ''Appendix.''[9] Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[8] We shall not impose any make-whole remedies on the Respondent, because the relevant complaint does not allege that it made any unilateral changes in its employees' wages, hours, or other terms and conditions of employment, or that after it withdrew recognition, it failed to adhere to the terms of the collective-bargaining agreement then in effect.

[9] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to provide information requested by Road Sprinkler Fitters Local Union No. 669, United Association of Journeymen & Apprentices

of the Plumbing and Pipefitting Industry of the United States and Canada, AFL–CIO that is relevant and necessary to the performance of its responsibilities as the exclusive collective-bargaining representative of our employees in the following appropriate unit:

> All full-time and regular part-time journeymen and apprentice sprinkler fitters engaged in the installation, alteration, maintenance, repair, and service of automatic sprinkler and fire control systems; excluding all other employees, guards, and supervisors as defined in the Act.

WE WILL NOT withdraw recognition from United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 536, as the exclusive collective-bargaining representative of our employees in the following appropriate unit:

> All journeymen sprinkler fitters and apprentices engaged in the installation, dismantling, maintenance, repairs, adjustments and corrections of all fire protection and fire control systems, excluding all other employees, guards, and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL furnish the information requested by Local 669 about February 7, 1994, except for employee social security numbers.

WE WILL, on request, recognize and bargain with Local 536 and, if an understanding is reached, embody it in a signed agreement.

AMERICAN GEM SPRINKLER CO., INC.